

ASAPNews

JUNE 2014

WELCOME



Eiri Ohtani
Interim director

We are delighted to report that last year was very productive for ASAP. We helped significantly more asylum seekers with their support appeal hearings – our duty scheme at the Asylum Support Tribunal assisted 567 asylum seekers (445 in 2012/13). Of these, we provided legal representation to 452 and advised 115 people before their oral hearings.

Many represented by us won their appeals, securing support and avoiding destitution. For those who did not, we provided expert legal advice on how to obtain support. From figures we have obtained, we secured access to legal advice and/or representation for nearly 60% of asylum seekers who had hearings at the tribunal in 2013/14.

There was also big increase in referrals to the duty scheme made by advice agencies across the UK; we received 365 referrals in 2013/14, 50% more than the previous year, and 43 people also came to us directly. Many thanks to all the advice agencies involved.

As there is no legal aid available for asylum support tribunal representation, our work continues to fill this justice gap. Our aim is to secure access to justice for every asylum seeker at the tribunal, and we hope to get closer to our goal in 2014/15 and beyond. Visit our webpage on referrals for more details – see www.bit.ly/1qhWFLI

Key legal updates

In our last newsletter we reported on the proposed residence test, which would make many migrants ineligible for legal aid purely because of their status, and how this would have a devastating effect on our clients. A judicial review on the lawfulness of the test was brought by the Public Law Project, and heard in the High Court on 3-4 April 2014. The entire refugee sector and all legal aid lawyers are waiting with bated breath for the judgement.

Meanwhile the government has laid the regulations which bring the changes into force on 4 August 2014. However, the regulations are subject to the affirmative procedure from both Houses of Parliament. Many legal advice agencies and practitioners are likely to lobby MPs and peers to convince them of the need to resist the introduction of the residence test, and we strongly encourage all to do so.

Our work representing clients at the tribunal will of course continue, regardless of what happens to legal aid. In recent months, we have had some success in retaining Section 4 support for some particularly vulnerable clients with mental health problems, who no longer meet the 'unable to leave for medical or other reasons' test. These clients may be in the process of preparing a fresh claim or, alternatively, taking steps to document themselves to leave, and the tribunal has recognised that their fragile mental state has an impact on their ability to take these steps.

We also continue to see families unfairly separated due to the rules on unmarried partners and asylum support claims. They are in a catch-22 situation; in order to qualify they have to have lived together for two out of the last three years and yet to do so would put the partner already on support in breach of his/her accommodation agreement.

We can report more positive news in the area of statelessness. Notwithstanding the incorrect information on the Home Office's website, stating that Section 4 support cannot be provided following the making of an application, the tribunal has awarded support, correctly treating the applications like any other fresh claim. In a similar vein, we are continuing to win some appeals for appellants with Article 8 claims, although the Home Office routinely refuses their Section 4 applications.

Damages from unlawful detention could be a growing problem for Section 4 applicants. Often it is impossible for ex-detainees to access their money, as they do not have a bank account or the documents needed to open one. In other cases they have received the money but, in the view of the Home Office, have spent it too quickly and so a decision of 'not destitute' is made.

So far we have been successful in appealing these decisions, sometimes for procedural reasons.

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Good news on Section 95

There is very good news on the judicial review brought by Refugee Action regarding the failure of the Home Office to increase Section 95 support rates since 2011. The Home Office's methodology for setting the rates was found to be irrational and based on incorrect facts. It now has until 9 August to re-set the rates. It was not within the scope of the case for the judge to state that the rates must increase, and so, in theory, the Home Office could leave them untouched and provide a new, and this time rational, justification. Should this occur, expect more litigation. Alison Pickup, ASAP's chair, was one of the three barristers acting for Refugee Action.

■ For more information about these issues, contact our solicitor, Deborah Gellner, at deborah@asaproject.org.uk

WELCOME TO OUR NEW DUTY SCHEME ADVOCATES

ASAP's duty scheme relies heavily on our wonderful volunteer advocates. ASAP staff members and volunteer lawyers take turns to provide free advice and representation to asylum seekers who have asylum support appeal hearings at the tribunal in East London. We usually have a team of between 30-40 advocates and recruit and train new advocates at least once a year.

In February, we welcomed 15 new advocates who all attended our intensive two-day training course. The training was delivered by our solicitor, Deborah Gellner, and duty scheme coordinator, Anna Dixie. The new advocates then shadowed more experienced advocates and will be assessed before they assist our clients.

We are very grateful to law firms and chambers for their support in maintaining our volunteer advocates team. Many come from Herbert Smith Freehills and Freshfields Bruckhaus Deringer, which have supported us for many years. We also have volunteers from Lloyds TSB Bank, Osborne Clark, Debevoise and Plimpton, Ben Hoare Ben, Duncan Lewis and Hansen Palomares. Pupils and barristers from Garden Court Chambers, Doughty Street Chambers, Charter Chambers, 1 Mitre Court Buildings Chambers and 1 Pump Court Chambers also play an active part in the duty scheme.

■ **To showcase their work, we created this video last year – see www.vimeo.com/81816817**
For more on the duty scheme, email anna@asaproject.org.uk



ASAP IS NOW ON TWITTER!
We are finally embracing this social media craze – follow us on [@_A_S_A_P](https://twitter.com/_A_S_A_P) and please spread the word.

Concern about withdrawn appeals

At the First-tier Tribunal (Asylum Support) user group meeting in April 2014, ASAP once again raised the issue of withdrawn appeals. Our impression was that the number of asylum support decisions being withdrawn by the Home Office had increased in 2014, resulting in more withdrawn appeals. While a withdrawn case is not inherently bad, regular withdrawals at short notice leads to uncertainty for our duty scheme and appellants.

Our concern centred on two main aspects:

- First, if appeals could regularly be withdrawn shortly before the scheduled hearing, an appellant might make unnecessary arrangements for travelling to the tribunal.
- Second, and perhaps more importantly, reports from other advice agencies indicated that the Home Office sometimes delayed issuing a new decision after a withdrawal. This meant the asylum seeker (or refused asylum seeker) would be left destitute in the interim period, contrary to the procedure set out in the asylum support appeal process instruction.

In light of these potential concerns, ASAP's legal researcher monitored our own data (the Home Office does not hold statistics on withdrawals) to confirm whether our general impression was borne out in statistics for the period October 2013 to March 2014. Although our data on withdrawn appeals is not fully comprehensive (for example, we rarely know the reason why a decision has been withdrawn), we record each time either the tribunal or an appellant informs us that an appeal has been withdrawn.

Our monitoring exercise indicated that:

- From 1 October 2013 to 25 March 2014, at least 77 appeals were withdrawn (only one confirmed as withdrawn by the appellant)
- The number of withdrawn appeals had increased from the previous six months
- From January to March 2014 there was a monthly increase in the percentage of listed appeals being withdrawn (14% in January, 18% in February and 22% in March)
- Out of the 43 withdrawn appeals notified to us by the tribunal, 12 were withdrawn with less than three days' notice

Aside from the fact that the majority concern Section 4 support, there was no discernible pattern to the type of appeal being withdrawn

(51% were refusals and 49% were discontinuation cases).

We presented our findings to the user group meeting.

There, the deputy tribunal judge confirmed that, compared to the previous year, the tribunal's statistics showed an increase in the number of appeals being withdrawn by the Home Office. The Home Office representatives had no conclusive explanation and agreed to report back on the issue at the next meeting.

But they offered two possible explanations for the increase. One was that a vetting process performed by the chief presenting officer had caused more cases to be withdrawn. Another was that in many Section 4 cases, appellants were providing new evidence shortly before an appeal, and this led to withdrawals at short notice.

We will continue to monitor the situation to see if the trend continues. For more information contact our legal researcher, Mark Rogers, at mark@asaproject.org.uk.

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Free factsheets on asylum support

We have 20 factsheets covering various aspects of asylum support and asylum support appeals. They are free to download and are ideal for advisers and others assisting asylum seekers with their housing and support queries. The latest addition is factsheet 20, 'Section 4 support for people applying for bail from detention and who have been released on bail from detention'. Before you call our advice line, please check if there are any factsheets that answer your question at www.bit.ly/1y7RlWd

Asylum contract: a missing link?

On 1 April 2014, One Stop Services, the national charity-run advice services that helped asylum seekers access financial support and housing from the Home Office, was replaced by Asylum Help, delivered by Migrant Help. This cheaper service does not contain advocacy and representation for asylum support appeals. At ASAP, we are concerned that this could compromise asylum seekers' ability to challenge Home Office decisions to deny them food and shelter.

If an asylum seeker's application for support is refused they may appeal to the First-Tier Tribunal (Asylum Support) within three working days. Their representative (usually from the voluntary sector) must fill in the appeal form and draft grounds of appeal. They must later respond to directions issued by the tribunal asking them to make further legal arguments and

supply evidence in support of their appeal. ASAP steps in once a hearing is set, and advice agencies refer their client to our duty scheme.

In the Asylum Help contract, a link in the appeals process is missing. While Migrant Help will help clients to apply for asylum support and may be able to help enter their personal details onto the appeal form, our understanding is that they will not be able to make legal representations, an essential part of any appeal. The idea is that Migrant Help will refer their clients to other voluntary sector organisations or legal aid firms for this. We are not sure if refugee charities and advice agencies, already struggling with diminishing resources, can cope with this time-consuming and complex work.

We will be monitoring the number of asylum support appeals lodged after 1 April at the tribunal.

ASAP ADVICE LINE CASE STUDY



The case: accommodation for a pregnant woman fleeing an abusive relationship

We receive a call from an advice worker on behalf of a woman with an outstanding asylum claim. She is pregnant and suffering from mental health problems. She is currently in initial accommodation after escaping from an abusive relationship with her former partner. She has ongoing contact with social services, which has expressed concern about her ability to care for the baby when it's born. She is feeling unsafe in the initial accommodation. It is not secure and the address is well known. She is worried that her ex-partner may be able to find her. She is very concerned about being offered accommodation in a dispersal area, where she will be isolated.

We tell the worker about Home Office policy bulletin 70 on domestic abuse. It states that the Home Office is able to pay for refuge accommodation and also that it does not regard initial accommodation as 'preferable' in these circumstances. We advise that the policy bulletin needs to be updated and that, despite making mention of the Home Office's ability to pay for refuge accommodation, we are not aware of this happening in practice. Nevertheless, if her client agrees, we advise that the advice worker should use the policy to argue that this woman needs the security and specialist support that a refuge can provide. We also tell the advice worker about a refuge network in the city which can give further advice about the availability of accommodation.

We advise the worker to highlight the involvement of social services with this woman. Its involvement with child protection may strengthen her case for safe accommodation in her current city, where social services can maintain its assessment of her ability to care for her baby. We also refer the advice worker to the Home Office policy bulletin on healthcare needs, pregnancy and dispersal. This policy allows for a 'protected' period in late pregnancy and just after birth, when a woman will not be dispersed.

Our advice line is open on Monday, Wednesday and Friday from 2pm to 4pm on 020 7729 3042 to give asylum support law advice to organisations and agencies working with asylum seekers.

ASAP raises over £2,000 on Legal Walk



ASAP's team had a pleasant stroll around London on 19 May with thousands of other legal practitioners and supporters of the justice system to raise money to support legal advice work in the UK. The walk was organised by the London Legal Support Trust and has always been a great opportunity to raise money for our vital legal representation work. Our fundraising page at www.bit.ly/1p5bM9g will stay open – we are still short of our target of £3,000, so any donations, large and small, are very welcome!

Women's Project – highlights

In March 2014, we came to the end of our Comic Relief funding for the Women's Project at ASAP. The project was set up in response to our concerns about the vulnerability of the female appellants that we represent at the asylum support tribunal. Here are some of the highlights over the last three years of the project.

■ We increased our representation of women appellants at the tribunal and developed legal arguments that addressed the gender-specific nature of their cases. We represented women such as Ms Y, who had been refused asylum but who continued to fear return to her country of origin. Destitute and with a high-risk pregnancy, she won her appeal to be given basic accommodation and support.

This young woman was not an unusual case for ASAP representatives at the tribunal. The women appearing at the tribunal are often vulnerable, with physical or mental health difficulties, and often with the additional responsibility of child care. Appearing before the tribunal is, in itself, a stressful and exhausting experience and these women benefit hugely from having a supportive presence to argue their corner during the hearing and clearly explain what has happened after the hearing has concluded.

■ We raised awareness about asylum support, with 235 people from 96 organisations attending our nationwide training which encompassed the

particular needs and rights of women within the asylum support system. We produced factsheets addressing the asylum support rights of women and made them available on our website.

■ We lobbied the Home Office, alongside our partners in the Women's Asylum Charter group, highlighting the particular needs of women in the asylum support system. After a long period of persistent lobbying, the Home Office recognised that it should pay for travel to hospital for women in labour.

Overall, our training and workshops have received the greatest amount of positive feedback during the project and they continue to be regularly oversubscribed. This reflects the fact that ASAP is a widely recognised expert on asylum support issues and is able to provide specialised training that is not available from any other source.

Our own learning – specific needs of asylum-seeking women

This project enabled ASAP to gain greater understanding of the gender-specific needs of women, the barriers that they face when trying to secure housing and welfare support, and their complex vulnerabilities. ASAP hopes to be able to continue to assist these women directly and also through our second-tier work, as well as through our policy and influencing work, so that there will be more gender-sensitive asylum support policies.

Future of housing and welfare advice to asylum seekers and refused asylum seekers

Since ASAP was established in 2005, we have gradually changed the way asylum support is conceptualised by the sector, through the women's project and other work. Now, most of those who work with asylum seekers understand that asylum support is provided within a specific legal framework and is not a random handout. There is a greater understanding that asylum seekers and refused asylum seekers are legally entitled to support, when they meet the criteria. More people also understand that unlawful asylum support decisions can be legally challenged.

However, understanding of asylum support law in the sector remains patchy, as demonstrated by feedback we receive from our training participants and the many unsolicited requests for training we regularly receive. It is challenging to keep up with the fast pace of change in asylum support policy and practice. But, for the benefit of asylum seekers and refused asylum seekers, we believe that it is crucial that those who work with this group can give competent advice about their welfare and housing matters.

ASAP will be publishing a short evaluation report on the Women's Project in late summer 2014. For more information about the project, please contact women's legal adviser, Alice Webb, at alice@asaproject.org.uk

ASAP training sessions around the UK: a busy schedule

Over the past few months, we have been busy delivering numerous training sessions around the UK. In March, we were in Liverpool, training staff and volunteers from Asylum Link, MRANG, Red Cross and Refugee Action. We also ran sessions for UKLGIG and delivered part of the training organised by Rights of Women.

In Leeds, we had a fantastic session with 16 people from organisations including Northern Refugee Centre, PAFRAS, ARKH, RASA, Bradford Action for Refugees, Beacon, St Augustine's Centre and BAFR. Many thanks to Collette at the Northern Refugee Centre who dealt with the admin for Leeds. And apologies to many people who were not able to get onto this training session: it was oversubscribed as soon as it was advertised.

In June and July, we are delivering training sessions to many staff and volunteers who work at the British Red Cross and who help asylum seekers with support queries in London, Glasgow, Durham and Leicester. We look forward to working with them.

If you want us to deliver a training session, contact Eiri at eiri@asaproject.org.uk – we have a scale of fees to subsidise costs for organisations with small incomes. If there are several organisations in your area who all want asylum support law training, why not get in touch with us as a group? We will do our best to be flexible.



Deborah Gellner, ASAP's solicitor, is one of our trainers

ASAP's plan



Following our consultation last year (and thank you to everyone who participated), we have now produced our five year strategic plan.

The consultation shows that ASAP is a well-respected niche organisation. Our work at the tribunal is valued greatly. Over half of respondents also value our evidence and policy work. They highlighted the importance of this over the next five years, as other agencies begin to lose capacity to focus on this area.

For the future, agencies requested more support and training in asylum support and appeals work. A quarter of respondents also highlighted the impact of reductions in refugee sector funding and the need for increased partnership working, particularly for training and support, and for specific policy issues.

See www.bit.ly/1ydkk1Q for the strategic plan, and also our last annual report for more details of our work, which is at www.bit.ly/1q7WCzz

Get networked with us

The **Asylum Support Advice Network** is an email list run by ASAP. It gives information about asylum support law, policy and practice to legal practitioners, advisers and others who give asylum support advice. We also circulate information and resources to advisers who support destitute and refused asylum seekers, such as sources of charitable support or training opportunities for advisers. The network has over 250 subscribers in the UK. Many are regular users of ASAP's advice line and make referrals to our duty scheme.

Recent topics on the network include:

- We reported on an appeal at the asylum support tribunal with broader strategic implications. The appeal concerned an appellant who had an outstanding application to be recognised as a stateless person. The ASAP advocate successfully argued that, contrary to Home Office policy, the appellant was eligible for Section 4 support pending a decision on this application.
- We summarised the government's proposed changes to judicial review funding, which will impact asylum seekers' ability to challenge decisions, including the refusal of support.
- We shared highlights from the biannual asylum support tribunal user group meeting, including a discussion of recent trends in asylum support appeals and an update on the introduction of a tribunal email address for submitting appeals.



Sarah Teather MP was a guest speaker at our annual Destitution Awareness Day in 2013

ASAP also runs **LDAN (London Destitution Advice Network)**, an informal network of London non-statutory agencies committed to reducing the destitution of asylum seekers and undocumented migrants in London. It was set up in 2007 following the publication of reports such as Refugee Action's report, 'The Destitution Trap', which highlighted the plight of destitute, refused asylum seekers.

LDAN hopes to improve the quality and quantity of destitution advice for this group by sharing information, best practice and building a referral network. We meet four times a year. The network also sends updates on changes to the asylum support system and other relevant information. The network currently has more than 100 members from 27 organisations.

For more on the Asylum Support Advice Network and LDAN, contact Anna Dixie at anna@asaproject.org.uk

ASAP staff news: our new intern and more

Many of you already know our new intern, **Kama Petruczenko**, as she spends much of her time on the phone chasing up documents and further information. Kama joined ASAP in February and has been providing much needed help in our busy office. She is responsible for managing the evidence base for our research and policy work and also assists our duty scheme coordinator with referrals. Kama was a volunteer adviser at the Migrants Resource Centre and has a strong

interest in asylum and human rights issues. We thank **Milad Yousefi**, our previous intern.

We have also had other staff changes. Our director, **Hazel Williams**, is on maternity leave until October 2014; **Marie-Anne Fishwick**, our legal researcher, is also on maternity leave and will be returning about the same time as Hazel. In the meantime, **Mark Rogers** and **Eiri Ohtani** are providing maternity cover for Marie-Anne and Hazel respectively. You can see the up-to-date staff list here – www.bit.ly/1vnEi7Q

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